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14
15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 UNICOLORS, INC., a California
18 Corporation,

19 Plaintiff,

20 vs.

21 CORNERSTONE APPAREL, INC., a
22 California Corporation, individually, and
23 doing business as “PAPAYA”; MJC
24 CONNECTION, INC., a California
25 Corporation; SUEDE APPAREL, a
California business entity of unknown
form; FHL STYLES, a California
business entity of unknown form; and
DOES 1 through 10,

Defendants.

Case No.:

PLAINTIFF'S COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT;
2. VICARIOUS AND/OR
CONTRIBUTORY COPYRIGHT
INFRINGEMENT

Jury Trial Demanded

1 Plaintiff, UNICOLORS, INC. (hereinafter “UNICOLORS”), by and through its
2 undersigned attorneys, hereby prays to this honorable Court for relief based on the
3 following:

4 **JURISDICTION AND VENUE**

5 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101
6 *et seq.*

7 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
8 1338 (a) and (b).

9 3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and
10 1400(a) in that this is the judicial district in which a substantial part of the acts and
11 omissions giving rise to the claims occurred.

12 **PARTIES**

13 4. Plaintiff UNICOLORS is a corporation organized and existing under the
14 laws of the State of California with its principal place of business located in Los
15 Angeles County.

16 5. Plaintiff is informed and believes and thereon alleges that Defendant
17 CORNERSTONE APPAREL, INC., doing business as “PAPAYA,” (collectively
18 “PAPAYA”) is a corporation organized and existing under the laws of the state of
19 California with its principal place of business located at 5807 Smithway Street,
20 Commerce, CA 90040 and is doing business in and with the state of California.

21 6. Plaintiff is informed and believes and thereon alleges that Defendant MJC
22 CONNECTION, INC., (“MJC”) is a corporation organized and existing under the
23 laws of the state of California with its principal place of business located at 3443
24 South Main Street, Los Angeles, CA 90007 and is doing business in and with the
25 state of California.

26 7. Plaintiff is informed and believes and thereon alleges that SUEDE
27 APPAREL (“SUEDE”) is a business entity of unknown form organized and existing

1 under the laws of the state of California with its principal place of business located at
2 807 E 12th Street, Los Angeles, CA 90021 and is doing business in and with the state
3 of California.

4 8. Plaintiff is informed and believes and thereon alleges that Defendant FHL
5 STYLES (“FHL”) is a business of unknown form organized and existing under the
6 laws of the state of California with its principal place of business located at 410
7 Northridge Shopping Center, Salinas, CA 93906 and is doing business in and with
8 the state of California.

9 9. Plaintiff is informed and believes and thereon alleges that some of
10 Defendants DOES 1 through 5, inclusive, are manufacturers and/or vendors of
11 garments to named Defendant, which DOE Defendants have manufactured and/or
12 supplied and are manufacturing and/or supplying garments comprised of fabric
13 printed with Plaintiff’s copyrighted designs (as hereinafter defined) without
14 Plaintiff’s knowledge or consent or have contributed to said infringement. The true
15 names, whether corporate, individual or otherwise of Defendants DOES 1-5,
16 inclusive, are presently unknown to Plaintiff, which therefore sues said Defendants
17 by such fictitious names and will seek leave to amend this complaint to show their
18 true names and capacities when same have been ascertained.

19 10. Defendants DOES 6 through 10, inclusive, are other parties not yet
20 identified who have infringed Plaintiff’s copyrights, have contributed to the
21 infringement of Plaintiff’s copyrights, or have engaged in one or more of the
22 wrongful practices alleged herein. The true names, whether corporate, individual or
23 otherwise, of Defendants DOES 6 through 10, inclusive, are presently unknown to
24 Plaintiff, which therefore sues said Defendants by such fictitious names, and will
25 seek leave to amend this Complaint to show their true names and capacities when
26 same have been ascertained.

1 11. Plaintiff is informed and believes and thereon alleges that at all times
2 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
3 manager, principal, alter-ego, and/or employee of the remaining Defendants and was
4 at all times acting within the scope of such agency, affiliation, alter-ego relationship
5 and/or employment; and actively participated in or subsequently ratified and adopted,
6 or both, each and all of the acts or conduct alleged, with full knowledge of all the
7 facts and circumstances, including, but not limited to, full knowledge of each and
8 every violation of Plaintiff's rights and the damages to Plaintiff proximately caused
9 thereby.

10 **CLAIMS RELATED TO DESIGN TO544**

11 12. Prior to the conduct complained of herein, Plaintiff composed an original
12 two-dimensional artwork for purposes of textile printing. It allocated this design the
13 name "TO544" (hereinafter "Subject Design"). This artwork was a creation of
14 Plaintiff and Plaintiff's design team, and is, and at all relevant times was, owned in
15 exclusively by Plaintiff.

16 13. Plaintiff applied for and received a United States Copyright Registration
17 for the Subject Design.

18 14. Prior to the acts complained of herein, Plaintiff sampled and sold fabric
19 bearing Subject Design to numerous parties in the fashion and apparel industries.

20 15. Following this distribution of product bearing the Subject Design,
21 Plaintiff's investigation revealed that certain entities within the fashion and apparel
22 industries had misappropriated the Subject Design, and were selling fabric and
23 garments bearing illegal reproductions and derivations of the Subject Design.

24 16. Plaintiff is informed and believes and thereon alleges that, without
25 Plaintiff's authorization, MJC, PAPAYA, and certain DOE Defendants created, sold,
26 manufactured, caused to be manufactured, and distributed garments comprised of
27 fabric featuring designs which are identical to or substantially similar to the Subject

1 Design (hereinafter “Infringing Garment A”). These garments include but are not
 2 limited to the garment shown below with Style Number T70227, and bearing the
 3 label “PAPAYA,” indicating said garments were manufactured by, caused to be
 4 manufactured by, or supplied by PAPAYA.

5 17. Plaintiff served a cease and desist demand on MJC and PAPAYA on May
 6 22, 2015, but Defendants failed to adequately respond.

7 18. A comparison of the Subject Design and the Infringing Garment A is set
 8 forth below; it is apparent that the elements, composition, colors, arrangement,
 9 layout, and appearance of the design are substantially similar.



23 19. Plaintiff is informed and believes and thereon alleges that, without
 24 Plaintiff’s authorization, SUEDE and certain DOE Defendants created, sold,
 25 manufactured, caused to be manufactured, and distributed garments comprised of
 26 fabric featuring designs which are identical to or substantially similar to the Subject
 27 Design (hereinafter “Infringing Garment B”) to at least one retailer, FHL, who then

1 sold said garments to the public. These garments include but are not limited to the
2 garment shown below with Style Number SUP-7011.

3 20. Plaintiff served a cease and desist demand on SUEDE and FHL on May 22,
4 2015, but Defendants failed to adequately respond.

5 21. A comparison of the Subject Design and the Infringing Garment B is set
6 forth below; it is apparent that the elements, composition, colors, arrangement,
7 layout, and appearance of the design are substantially similar.

<u>Subject Design</u>	<u>Infringing Garment B</u>
	<p>DETAIL</p>  <p>GARMENT</p> 

FIRST CLAIM FOR RELIEF

(For Copyright Infringement – Against All Defendants, and Each)

3 22. Plaintiff repeats, realleges, and incorporates herein by reference as though
4 fully set forth, the allegations contained in the preceding paragraphs of this
5 Complaint.

6 23. Plaintiff is informed and believes and thereon alleges that Defendants, and
7 each of them, had access to the Subject Design, including, without limitation, through
8 (a) access to Plaintiff's showroom and/or design library; (b) access to illegally
9 distributed copies of the Subject Designs by third-party vendors and/or DOE
10 Defendants, including without limitation international and/or overseas converters and
11 printing mills; (c) access to Plaintiff's strike-offs and samples, and (d) garments
12 manufactured and sold to the public bearing fabric lawfully printed with the Subject
13 Design by Plaintiff for its customers.

14 24. Plaintiff is informed and believes and thereon alleges that one or more of
15 the Defendants manufactures garments and/or is a garment vendor. Plaintiff is
16 further informed and believes and thereon alleges that said Defendant(s) has an
17 ongoing business relationship with Defendant retailer, and each of them, and supplied
18 garments to said retailer, which garments infringed the Subject Design in that said
19 garments were composed of fabric which featured unauthorized print design(s) that
20 were identical or substantially similar to the Subject Design, or were an illegal
21 derivation or modification thereof.

22 25. Plaintiff is informed and believes and thereon alleges that Defendants, and
23 each of them, infringed Plaintiff's copyrights by creating, making, and/or developing
24 directly infringing and/or derivative works from the Subject Design and by
25 producing, distributing and/or selling garments which infringe the Subject Design
26 through a nationwide network of retail stores, catalogues, and through on-line
27 websites.

26. Due to Defendants' acts of infringement, Plaintiff has suffered substantial damages to its business in an amount to be established at trial.

27. Due to Defendants' acts of infringement, Plaintiff has suffered general and special damages in an amount to be established at trial.

28. Due to Defendants' acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of the Subject Design. As such, Plaintiff is entitled to disgorgement of Defendant's profits directly and indirectly attributable to Defendant's infringement of the Subject Design in an amount to be established at trial.

29. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, have committed acts of copyright infringement, as alleged above, which were willful, intentional and malicious, which further subjects Defendants, and each of them, to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000.00) per infringement. Within the time permitted by law, Plaintiff will make its election between actual damages and statutory damages.

SECOND CLAIM FOR RELIEF

(For Vicarious and/or Contributory Copyright Infringement - Against All Defendants)

30. Plaintiff repeats, realleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs of this Complaint.

31. Plaintiff is informed and believes and thereon alleges that Defendants knowingly induced, participated in, aided and abetted in and profited from the illegal reproduction and/or subsequent sales of garments featuring the Subject Design as alleged herein.

1 32. Plaintiff is informed and believes and thereon alleges that Defendants, and
2 each of them, are vicariously liable for the infringement alleged herein because they
3 had the right and ability to supervise the infringing conduct and because they had a
4 direct financial interest in the infringing conduct.

5 33. By reason of the Defendants', and each of their acts of contributory and
6 vicarious infringement as alleged above, Plaintiff has suffered and will continue to
7 suffer substantial damages to its business in an amount to be established at trial, as
8 well as additional general and special damages in an amount to be established at trial.

9 34. Due to Defendants', and each of their acts of copyright infringement as
10 alleged herein, Defendants, and each of them, have obtained direct and indirect
11 profits they would not otherwise have realized but for their infringement of the
12 Subject Design. As such, Plaintiff is entitled to disgorgement of Defendants' profits
13 directly and indirectly attributable to Defendants' infringement of the Subject Design,
14 in an amount to be established at trial.

15 35. Plaintiff is informed and believes and thereon alleges that Defendants, and
16 each of them, have committed acts of copyright infringement, as alleged above,
17 which were willful, intentional and malicious, which further subjects Defendants, and
18 each of them, to liability for statutory damages under Section 504(c)(2) of the
19 Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000.00)
20 per infringement. Within the time permitted by law, Plaintiff will make its election
21 between actual damages and statutory damages.

22 **PRAYER FOR RELIEF**

23 Wherefore, Plaintiff prays for judgment as follows:

24 **Against All Defendants**

25 **With Respect to Each Claim for Relief**

- a. That Defendants, their agents and employees be enjoined from infringing Plaintiff's copyrights in any manner, specifically those for the Subject Design;
- b. That Plaintiff be awarded all profits of Defendants plus all losses of Plaintiff, plus any other monetary advantage gained by the Defendants through their infringement, the exact sum to be proven at the time of trial, or, if elected before final judgment, statutory damages as available under the Copyright Act, 17 U.S.C. § 101 et seq.;
- c. That a trust be imposed over the revenues derived by Defendants, and each of them, through the sales or distribution of the product at issue;
- d. That Plaintiff be awarded its attorneys' fees as available under the Copyright Act, 17 U.S.C. § 101 et seq.;
- e. That Defendants, and each of them, account to Plaintiff for their profits and any damages sustained by Plaintiff arising from the foregoing acts of infringement;
- f. That Plaintiff be awarded pre-judgment interest as allowed by law;
- g. That Plaintiff be awarded the costs of this action; and
- h. That Plaintiff be awarded such further legal and equitable relief as the Court deems proper.

Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P. 38 and the 7th Amendment to the United States Constitution.

Respectfully submitted,

Dated: October 16, 2015

By: /s/ Scott Alan Burroughs
Scott Alan Burroughs, Esq.
DONIGER / BURROUGHS
Attorneys for Plaintiff
UNICOLORS, INC.